



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD)No.117 of 2014

in

W.P(MD)No.11528/2010

K.R.Krishnamoorthy

... Appellant/Writ Petitioner

Vs.

1. The Director General,
Highways Department,
Chepauk,
Chennai -5.
2. The Chief Engineer,
Highways Department,
Chepauk,
Chennai -5.
3. The Superintending Engineer (Highways),
Madurai Circle,
Madurai -2.
4. The Divisional Engineer (Highways),
Sivagangai.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patents against the order dated 24.11.2011 passed by this Court in W.P.(MD). No.11528 of 2010.

Prayer in WP(MD). 11528/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order of the 2nd respondent in Memo No.43108/Administration 5(1)/2007 dated 28.06.2010 and quash the same and further direct the respondents 1 and 2 to include the petitioners name in the seniority list of Junior Draughting Officer considering the petitioner's entire service rendered in the Highways Department and Rural Development Department.

For Appellant

: Mr.N.Mohan

For Respondents

: Mr.A.K.Baskara Pandian

Special Government Pleader

J U D G M E N T

[Judgment of the Court was delivered by M.M.SUNDRESH,J.]

The Writ Appeal has been filed against the order passed by this Court in W.P. (MD) .No.11528 of 2010, dated 24.11.2011.

2. The appellant was initially appointed as an Assistant Draughtsman in Highways Department in the year 1982. Thereafter, he was posted as Overseer in the Rural Development Department, in pursuant to the option exercised by him. He once again opted for reversion to the Highways Department after two years. His request was considered and accordingly he was posted as Assistant Draughtsman. The said post of Overseer does not exist in the Highways Department. Strangely the appellant once again expressed his option to continue to serve as Overseer in the Rural Development Department. His request was once again accepted and accordingly, he was posted to the Rural Development Department on 09.02.2000. Thereafter, he has been permanently absorbed in the Rural Development Department. Not satisfied with the same, he once again made a request to go to the Highways Department. As per the option exercised by him, he was accordingly surrendered to the Highways Department on 09.11.2007. He was given posting as Junior Draughting Officer. He joined the said post on 02.12.2007. The appellant wanted to take into consideration the past service rendered in the Highways Department. Since his joining in the Highways Department was considered afresh, based on his option exercised on 19.12.2007, his seniority was fixed by taking into consideration the said joining. Aggrieved over the same, he filed the writ petition. The learned Single Judge dismissed the writ petition and hence, the present writ appeal is filed.

3. The learned counsel appearing for the appellant would submit that no absorption is possible with the Rural Development Department. Therefore, under these circumstances, his services will not be reckoned from the date of joining with the Highways Department. Reliance has been made on the judgment of the Division Bench in W.P.Nos.24453 of 2004 etc., dated 13.02.2009.

4. In the counter affidavit filed by the respondents, the following stand has been taken.

"5. After serving as Overseer in Rural Development Department for more than two years, the petitioner has opted for reversion to his parent department (i.e., Highways Department). The Director had also surrendered him to the department for posting him to his feeder category (i.e.,) Assistant Draughtsman. Since the post of Overseer does not exist in Highways Department, the petitioner was posted as Assistant Draughtsman, the post which he had held prior to his posting as Overseer in Rural Development Department. However, the petitioner chose not to join in the post of Assistant Draughtsman in Highways Department and gave his



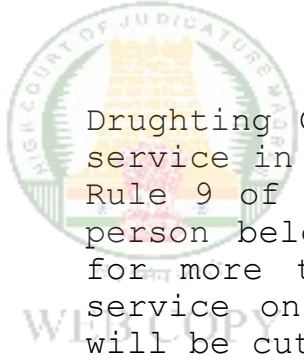
willingness to continue permanently in Rural Development Department. Accordingly, orders were issued by Rural Development absorbing him permanently in Rural Development Department itself.

6. As per the Service Rules of the Rural Development Department the post of Overseer and Junior Draughting Officer were considered by Rural Development Department as interchangeable and the petitioner was transferred and posted as Junior Draughting Officer by Rural Development Department and he joined as Junior Draughting Officer on 24.07.2007. But the service rules will not bind this Department and there are separate service rules for this department. However, the petitioner after serving for a few months again requested the Director of Rural Development Department to revert him back to Highways Department. Based on the willingness of the petitioner, he was surrendered to Highways Department and subsequently he was posted as Junior Draughting Officer in Highways Department on 19.12.2007 by the Chief Engineer (Highways).

7. The petitioner was elevated to Selection Grade in the post of Junior Draughting Officer taking into consideration his service in the post of Overseer, ie., the post with equal scale of pay.

8. As per Rule 9 of Tamil Nadu State and Subordinate Service Rules, if a person belonging to one service, happens to serve in another service for more than 5 years and if he is not reverted to the former service on completion of 5 years his lien in the former service will be cut. Moreover, the service rules framed for Rural Development Department will not be applicable for Highways Department, since this department has its own separate service rules. In Highways Department there is no provision in service rules to the effect that both the posts of Overseer and Junior Draughting Officer are interchangeable. Further, prior to his post in Highways Department was permanently absorbed in Rural Development Department and duly on his option he has been reverted to parent department. Hence, his joining in Highways Department as Junior Draughting Officer on 19.12.2007 will be considered as fresh service in Highways Department and his seniority in the post of Junior Draughting Officer was fixed accordingly duly taking note of his date of joining as Junior Draughting Officer in Highways Department and the petitioner was informed accordingly by the second respondent on 26.06.2010."

5. Based upon the aforesaid statement made, the learned Special Government Pleader appearing for the respondents would submit that the petitioner has got absolutely no case. As per the Service Rules of the Rural Development Department, the post of Overseer and Junior Draughting Officer are interchangeable. That is the reason why the appellant was elevated to selection grade in the post of Junior



Drughting Officer, on 19.12.2007, by taking into consideration the service in the post of Overseer. It is further submitted that as per Rule 9 of the Tamil Nadu State and Subordinate Service Rules, if a person belong to one service, happens to serve in another service for more than 5 years and if he is not reverted to the former service on completion of 5 years, his lien in the former service will be cut. Therefore, no interference is required.

6. The fact that the appellant was posted to the Rural Development Department and thereafter, surrendered to the Highways Department on different occasions as noted above is not in dispute. The appellant did surrender his service and that is the reason why he was absorbed permanently. Therefore, in law he was deemed to be an employee of the Rural Development Department. Rule 9 of the Tamil Nadu State and Subordinate Service Rules makes this position very clear that any employee, who was not reverted back to the former service, on completion of 5 years would lose his lien and therefore, he cannot count his services with the parent Department.

7. The appellant having surrendered to the Highways Department from the Rural Development Department with effect from 19.12.2007, cannot go back on it and claim the past services. The decision relied upon stands on different footing. Therefore, it does not have an application to the case on hand. It is not as if in all cases, absorption is not permissible with the Rural Development Department. The concerned Government Order passed in G.O.(Ms).No.102, Rural Development Department (F.IV), dated 25.05.1998, deals with the said circumstances. Therefore, the appellant having been absorbed in the Rural Development Department as a permanent employee and got the services terminated with the parent Department cannot reckon the service rendered by him earlier, when the Service Rules also different. Merely because he was surrendered back to the Highways Department and that too on his request he cannot get his services counted from the date of his initial appointment with effect from 1982. The appellant having got absorbed as a permanent employee cannot seek to claim the benefits with the respondents after the termination of the service. Therefore, his service is rightly reckoned from the date of his joining on 19.12.2007. Thus, we do not find any merit in the writ appeal. Accordingly, the writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)



To

1. The Director General,
Highways Department,
Chepauk,
Chennai -5.
2. The Chief Engineer,
Highways Department,
Chepauk,
Chennai -5.
3. The Superintending Engineer (Highways),
Madurai Circle,
Madurai -2.
4. The Divisional Engineer (Highways),
Sivagangai.

+1CC TO SPECIAL GOVERNMENT PLEADER IN S.R.NO,78812.

Akv

DS RP SAR-1:28.09.2018: 5P/6C

W.A. (MD) No.117 of 2014
14.08.2018